IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 34927 of 2004(G)

PETITIONERS:
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1. **THE MANAGER,**
   PANANGAD VOCATIONAL HIGHER SECONDARY SCHOOL,
   P.O. PANANGAD, KOCHI-682 506.

2. **K.MADHU,**
   MUSIC TEACHER (HIGH SCHOOL), PANANGAD VOCATIONAL HIGHER SECONDARY SCHOOL, P.O. PANANGAD, KOCHI-682 506.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTENT, SECRETARIAT,
   TRIVANDRUM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   JAGATHY, TRIVANDRUM-14.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   ERNAKULAM.

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   ERNAKULAM.

BY GOVERNMENT PLEADER SMT.T.B. RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34927/2004 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.B2-28050/2000/K.DIS. OF THE 3RD RESPONDENT DTD. 26/12/2000.**

EXT.P2: **COPY OF THE ORDER NO.D.DIS.20136/2001/RA (2) DPI OF THE 2ND RESPONDENT DTD. 25/07/2001.**

EXT.P3: **COPY OF THE G.O.(RT) NO.1145/2002/G.EDN. OF THE GOVERNMENT DTD. 14/05/2002.**

EXT.P4: **COPY OF THE G.O.(MS) NO.525/95/G.EDN. OF THE GOVERNMENT DTD. 28/10/1995.**

EXT.P5: **COPY OF THE JUDGMENT IN O.P.NO.18363/2002 DTD. 19/03/2003.**

EXT.P6: **COPY OF THE JUDGMENT IN W.A.NO.1580/2003 DTD. 07/09/2004.**

EXT.P7: **COPY OF THE JUDGMENT IN W.A.NO.1593/2003 DTD. 20/07/2004.**

EXT.P8: **COPY OF THE G.O.(P) NO.253/04/G.EDN. OF THE GOVERNMENT DTD. 06/08/2004.**

EXT.P9: **COPY OF THE DECISION REPORTED IN 2000 (2) K.L.J.633 DTD. 18/07/2000.**

EXT.P10: **COPY OF THE DECISION REPORTED IN 1998 (2) I.L.R.KER.771.**

EXT.P11: **COPY OF THE G.O.(RT) NO.4411/04/G.EDN. OF THE GOVERNMENT DTD. 08/10/2004.**

EXT.P12: **COPY OF THE G.O.(RT) NO.2581/04/G.EDN. OF ...DO.. DTD. 24/06/2004.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.34927 OF 2004-G

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Dated this the 17th day of July, 2007.

JUDGMENT

By Ext.P5 judgment, this Court had found that no amendments were carried out in Rule 6(4) of Chapter XXIII Kerala Education Rules in the light of an executive order referred to in the first paragraph of that judgment. Accordingly, the refusal to approve the appointment of a music teacher was quashed and it was directed that a decision shall be taken within a period of three months. That judgment was issued on 19-3-2003. It appears from Ext.P12 that another judgment was issued by this Court on 8-4-2003, i.e., after Ext.P5 judgment, remitting the case that arose for consideration in O.P.15879 of 2002.

2. The officer, who dealt with both the cases after

remit to the Government, is apparently the same. The decisions rendered as per Exts.P11 and P12 required pre-decisional hearing. It was a matter within the knowledge of that officer that the Government were proposing amendment to Rule 6(4) in Chapter XXIII KER. He was also aware that the Government had declared that necessary amendments to that rule will be brought into force. However, on 24-6-2004, Ext.P12 is issued in favour of a teacher of a school in Cherthala, acting as if the amendment has not come into force, which was the then true state of affairs. It is noted in Ext.P12 that the proposed amendment to Rule 6(4) in Chapter XXIII KER is yet to come. Having thus given the benefit to one school by disposing of the case covered by judgment dated 8-4-2003, the case of the petitioner covered by the earlier judgment dated 19-3-2003 is disposed of as per Ext.P11, whereby the approval has been refused since before Ext.P11 order was issued, the amendment to Rule 6(4) of Chapter XXIII KER was notified on 6-8-2004 with retrospective effect from 28-10-1995.

3. Reconciling the action taken in Exts. P11 and P12, I wonder whether it was a case where there is a calculated attempt to give a benefit under Ext.P12 on the face of an impending retrospective legislation while refusing the reliefs to the petitioner on the strength of such legislation. Having regard to the fact that Government had opposed the view taken by the learned single Judge in O.P.30259/2001, by filing a writ appeal, W.A.No.1593/2003, as is noticed in Ext.P11, was it the intention of the Government to finish off cases under the unamended rule when a proposed amendment, that too, with retrospective effect, was in the offing? The retrospective amendment inserted as per SRO.No.855/06 with effect from 28-10-1995 does not save even cases already approved. If that be so, would Ext.P12 be reviewed and approval recalled? If not, is not the second petitioner entitled to be extended the same benefit as given under Ext.P12, if that G.O. reflects the Government's interpretation of the law?

4. In the aforesaid circumstances, there is reasonable material even to hold that while denying the second petitioner the relief on the basis of the judgment dated 19-3-2003, a benefit has been extended as per Ext.P12 which, apparently, would be a case of extending a benefit which was not there in law or refusing to the second petitioner a benefit that ought to have accrued. If the yardstick applied in Ext.P12 is to be applied in the case of the second petitioner by treating the rights and liabilities of parties as to be determined as on the date of the judgment in O.P.30259/2001, the right in favour of the second petitioner ought to have been similar to that of the beneficiary of Ext.P12 case. On 19-3-2003, when this Court delivered the judgment in O.P.30259/2001, the statutory rule as it then stood provided for an approval of the post of the second petitioner.

5. Having regard to the aforesaid, the impugned

Ext.P11 is set aside and the Government are directed to reconsider the case of the second petitioner for grant of relief with reference to the date 19-3-2003. If that is not possible, the Government will take a decision as to why Ext.P12 order was issued by the same officer who has apparently caused the issuance of Ext.P11 Government Order. Let the aforesaid directions be complied with within an outer limit of four months from the date of receipt of a copy of this judgment.

The writ petition is allowed in the above terms.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-